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82-161-II



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March 2, 1983

Mr. William S. Tassie, Chief
Liquor Law Enforcement
New Hampshire Liquor Commission
Storrs Street
Concord, New Hampshire 03301

Dear Mr. Tassie:

You have requested an opinion whether your laws authorize a foreign wholesaler to transport, store, and distribute beer from New Hampshire, to foreign retailers. In our opinion, the answer to your question is no. Wilmington Warehousing Corporation ("Wilmington") may operate only in compliance with existing laws and regulations pertaining to licensed beverage wholesalers, RSA 181:9, 181:9-a and 181:26.

As we understand it, Wilmington seeks to operate a warehouse in New Hampshire and distribute beer primarily, if not exclusively, to Massachusetts retailers. This proposed interstate operation is, however, subject to regulation by the Commission. See Granite State Association v. State Liquor Commission, 112 N.H. 62 (1972) (New Hampshire statutes regulating liquor traffic held to be comprehensive and rational); Scott v. Donald, 165 U.S. 558, 17 S.Ct. 265 (1897) (traffic in liquor held a proper subject of state regulation whether or not actually produced in the state).

RSA 175:3 requires "that no person shall manufacture for sale or sell or keep for sale any liquor or beverage without first registering to do business with the secretary of state, and obtaining a license or permit therefor under the provisions



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of this title." By choosing to warehouse its beer in New Hampshire for ultimate resale, Wilmington is subject to RSA Title XIII and must obtain a permit. See also RSA 181:2.

The only permit for which Wilmington might qualify is that of a wholesaler, pursuant to RSA 181:9, 181:9-a, and Liq. Reg. 405.24. Under such a permit, Wilmington would be authorized to purchase only from holders of manufacturers' permits, wholesalers' permits, or certificates of approval (Liq. Reg. 405.24(b)).

Therefore, each supplier of Wilmington would have to obtain a certificate of approval before doing any business in the state, regardless of whether the manufacturer-supplier ever located in the state. RSA 181:26. Even if it were to transport the beverages FOB, certificates would still be required. Dugan v. Bridges, 16 F. Supp. 654 (1936) (court validated the certificate of approval requirement for a manufacturer never physically in the state, but seeking to do business here). Wilmington would also have to satisfy the three-year durational residency requirement set forth by RSA 181:9-a.

For all the above reasons, the proposed arrangement is not one which the laws of New Hampshire would authorize.

Very truly yours,

James E. Townsend
Assistant Attorney General
Division of Legal Counsel

JET:SG/smj
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